

Exhibit 35



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC., (CAUSE NO. 2:21-CV-463-JRG
)
Plaintiff, ()
vs. ()
SAMSUNG ELECTRONICS CO., LTD., ()
et al., () MARSHALL, TEXAS
() APRIL 20, 2023
Defendants. () 8:30 A.M.

VOLUME 5

TRIAL ON THE MERITS

BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES CHIEF DISTRICT JUDGE
and a jury

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1 THE COURT: Be seated, please.

2 Are the parties prepared to read into the record those
3 items from the list of pre-admitted exhibits used during
4 yesterday's portion of the trial?

5 MS. SMITH: We are, Your Honor.

6 THE COURT: Please proceed.

7 MS. SMITH: Thank you.

8 Yesterday, Your Honor, Samsung used DTX 4, JTX 17, JTX
9 18, JTX 52, JTX 53, and PX 1662.

10 THE COURT: All right. Any objection from
11 Plaintiff?

12 MS. TRUELOVE: No objection, Your Honor.

13 THE COURT: Does Plaintiff have a similar rendition
14 to read into the record?

15 MS. TRUELOVE: We do not, Your Honor. We did not
16 use any new or additional exhibits yesterday.

17 THE COURT: All right. Thank you, Counsel.

18 Is there anything the Court needs to hear from either
19 party on before I bring in the jury?

20 MR. SHEASBY: Nothing from Plaintiff, Your Honor.

21 MR. CORDELL: Nothing from Defendants, Your Honor.
22 Thank you.

23 THE COURT: Let's bring in the jury, please.

24 (Whereupon, the jury entered the courtroom.)

25 THE COURT: Good morning, members of the jury.

1 As to the issue of the starting date for damages for the
2 '054 Patent, the Court grants JMOL that the damages period for
3 the '054 Patent will not be prior to January the 25th, 2022.

4 With regard to the issue of foundry products, Plaintiff's
5 counsel is correct that where claims and defenses are
6 typically abandoned or jettisoned in advance of the trial, the
7 Court's practice is not to rule on those substantively, but in
8 this case the foundry products issue was litigated throughout
9 the pretrial process. At the conclusion of the pretrial
10 process, it was made clear to the Court that the parties
11 intended it to be a part of the trial on the merits before the
12 jury. It's that reason that the Court invited both sides to
13 submit suggested instructions for it to consider in its
14 preliminary jury instructions regarding the JDLA, its
15 termination date, and the issue of foundry products as being
16 excluded from the license provisions of the JDLA.

17 With regard to the foundry products issue under the JDLA,
18 notwithstanding what happened after the jury was impaneled and
19 the evidence began, this was a live issue that had not been
20 abandoned or narrowed through the impaneling of the jury and
21 the beginning of the trial. Therefore, I am going to rule on
22 the foundry products issue and I'm going to grant JMOL that
23 there is no infringement prior to the July 15th, 2021, date
24 with the termination of the JDLA with regard to foundry
25 products or anything else prior to that time. July 15th,

1 2020, being the termination date of the JDLA.

2 And those are the Court's rulings on motions argued under
3 Rule 50(a).

4 It's a quarter of 2:00, counsel. At this juncture, I
5 would typically invite you into my office where we would have
6 an informal charge conference and review the current status of
7 the proposed final jury instructions and verdict form. I
8 don't have room for everybody that's in here to be in my
9 office so, quite honestly, let's take a 15-minute recess and
10 then I will come back in the courtroom, you can stay where you
11 are, and we'll just conduct the informal charge conference in
12 the courtroom off the record. The Courtroom Deputy and the
13 court reporter won't be present, and we'll informally discuss
14 what you most recently submitted where you have disputes and
15 where the Court has questions.

16 So we stand in recess for 15 minutes.

17 (The proceedings were concluded at 1:45 p.m.)
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